IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2207 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PITAMBAR RAMANBHAI BIRADE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2207 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No.1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/07/2004

ORAL JUDGEMENT

1. The petitioner-detenu, who is a police constable, has knocked the doors of this Court by way of this

petition challenging the detention order dated 24.1.2004, by which he is detained as a "bootlegger", under the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about one criminal case which is registered against the petitioner as C.R.No.1011/03 at Udhna Police Station. The said case is registered against the petitioner under the Bombay Prohibition Act. It is alleged against the petitioner that, the petitioner is dealing in foreign liquor and is violating the provisions of the Bombay Prohibition Act. After considering the aforesaid case, and after considering the statements of some witnesses, whose names have not been disclosed to the petitioner, the authority has detained him as a "bootlegger" under PASA.

3. As stated earlier, the petitioner, at the relevant time, was serving as a police constable in the city of Surat. It is stated in the detention order that, the petitioner is having a criminal mind and is keeping dangerous arms and is of an aggressive nature. In the detention order, the activities of the petitioner are highlighted. In the detention order, there is also a reference about the statements of some witnesses, whose names have not been disclosed to the petitioner. The said witnesses have stated that the petitioner and his associates, including his wife, gave threat to the witnesses and started attacking them, with knife and other dangerous arms. The detaining authority is of the opinion that the names of such witnesses are not required to be disclosed to the petitioner as the petitioner is a dangerous person, and such names of the witnesses were kept secret, by claiming privilege under sec.9(2) of the PASA. The said detention order is under challenge at the instance of the petitioner.

4. Mr.Prajapati, learned Advocate for the petitioner, has challenged the aforesaid detention order of the petitioner on various grounds. During the course of hearing, he has pointed out to the Court that, in view of the aforesaid criminal case, being C.R.No.1011/03, the petitioner was placed under suspension by the department in January 2004. He submitted that the Commissioner of Police, Surat, had himself recommended the case of the petitioner for revocation of the suspension order, perhaps he was of the opinion that the aforesaid case is not serious enough, warranting suspension of the

petitioner for a long period. The petitioner was, accordingly, reinstated in service subject to continuance of the departmental inquiry, and after revoking the said suspension order, he is transferred from Surat District to Kheda District. The said order dated 31.5.2004 by which the suspension order is revoked by the Commissioner of Police, Surat City, is placed on record.

5. It is required to be noted that within four months' period from passing the suspension order, the Commissioner of Police, Surat, decided to revoke the said suspension order by taking the said order in review and ultimately the said order is revoked after taking approval of the Director General of Police.

6. Before examining the merits of the matter, it is required to be noted that the detaining authority is the Commissioner of Police, Surat. The detaining authority after considering the material on record has detained the petitioner under PASA. It is, therefore, presumed that the detaining authority was satisfied about the alleged illegal activities on the part of the petitioner. The Police Commissioner, who is also the disciplinary authority of the petitioner, has thereafter revoked the suspension order, perhaps on the ground that the case, in which the petitioner is involved, is not a very serious offence. Under the circumstances, it is difficult to appreciate as to what is the effect of the statements recorded under sec.9(2) of the Act, wherein the names of secret witnesses have not been disclosed to the detenu. It creates doubt whether the statements are really genuine or not because if such statements are taken into consideration, then it is clear that the petitioner is a dangerous person, as, serious allegations have been made against the petitioner by the so-called witnesses in their statement. Considering the said aspect, the statements under Section 9(2) of PASA are required to be ignored; otherwise, the authority itself would not have reinstated the concerned person in service if such statements are found to be correct.

7. Further, it is surprising to note that the very detaining authority, who is also the Disciplinary Authority, has recommended the case of the petitioner for revocation of his suspension order within four months' period. This subsequent event would, prima facie, show that, either the subjective satisfaction recorded by the authority about the so-called activities of the petitioner can never be said to be genuine and it is also doubtful whether such statements were recorded under Sec.9(2) of the PASA. If one can glance at such

statement which is incorporated in the order, it is difficult to understand that if such statements were recorded, how such a person can be continued in the police department and how the suspension order is revoked within a period of few months from the date of passing the suspension order.

8. In order to find out whether the suspension order is revoked or not, the learned AGP was requested to submit the file in connection with the said case. To-day, Mr.Kogje, learned AGP, has produced the file of the DGP and IGP. Looking to the said file, the DGP has merely endorsed the proposal sent by the Commissioner of Police, Surat City, about revocation of the suspension order of the petitioner, and in such proposal, the Disciplinary Authority has not stated the fact that the petitioner is already detained under preventive detention.

9. Learned advocate for the petitioner submitted that, before claiming the privilege under sec.9(2) of the PASA, the authority has not tried to verify about the credentials, character and antecedents of the detenu. It is further submitted that the privilege is claimed in a routine manner and, therefore, without any basis, the authority has tried to withhold the names of witnesses, and as a result of that, the petitioner is denied the valuable right of making an effective representation.

10. In this connection, the learned advocate for the petitioner has relied upon the decision of this Court rendered in the case of KISHOR NAGINBHAI PARMAR v. STATE OF GUJARAT, reported in 2000 (4) GLR 3236, wherein it is held in para 11 as under :

> "11. In this view of the matter, the detaining authority while exercising powers under Section 9 (2) of the P.A.S.A.Act for claiming privilege is expected to consider the general background, character, antecedents, criminal tendency of propensity etc. of the detenu. In the instant case, if affidavit or the grounds of detention are considered, all that is recorded by the detaining authority is that the fear expressed by the witnesses is found to be genuine and correct by the detaining authority. The detaining authority has recorded that it has carefully scrutinized, examined and considered all the materials that were produced before him by the sponsoring authority. It is, therefore, clear

> that the detaining authority, while verifying the statements of the witnesses and while considering the question of exercising privilege under Sec. 9 (2) of the P.A.S.A. Act, has not taken any independent steps for considering general background, character, antecedents, criminal tendency etc. while recording subjective satisfaction, but has relied solely on the material produced by the sponsoring authority. There is no contemporaneous record to indicate the steps taken by the detaining authority and the grounds and reasons for arriving at the subjective satisfaction. It is therefore very difficult to conclude that the detaining authority has considered general background, character, antecedents, criminal tendency and propensity etc. of the detenu while arriving at the subjective satisfaction, for the need of exercise of powers under Sec. 9 (2) of the P.A.S.A. Act and claim privilege by not disclosing identity of the anonymous witnesses."

11. The learned advocate for the petitioner has further submitted that, there is nothing on record to show that the detaining authority has tried to find out the antecedents of the detenu and, thus, there is a total non-application of mind on the part of the detaining authority while claiming privilege under Section 9(2) of PASA, and therefore, on that ground also, the impugned order is required to be quashed and set aside.

12. So far as the aforesaid contentions are concerned, no affidavit-in-reply is filed by the respondents, controverting the said contentions. This is one of the glaring cases, in which the authority itself, after passing the detention order, has allowed the petitioner to serve on the said post, by revoking the suspension order. Considering the fact that the petitioner is in police department, passing the order of preventive detention under PASA and subsequently taking him back in service while he is under preventive detention, both these actions can be said to be contradictory to each other. Even otherwise at the time of passing the detention order, the authority has not tried to verify the credentials, character and antecedents of the detenu as laid down by this Court in the aforesaid judgment. The subjective satisfaction arrived at by the detaining authority, therefore, can be said to be vitiated, especially when the respondents have not filed any reply denying the averments made in the petition. On the aforesaid ground, the petition is

required to be allowed. It is, however, clarified that this Court is not concerned with the merits of revocation of suspension order in any manner. The observations are made in connection with deciding the present petition wherein the detention order passed against the petitioner is under challenge.

13. Learned advocate for the petitioner submitted that, there is only one solitary case registered against the petitioner under the Bombay Prohibition Act. It is submitted that, from the aforesaid case, it cannot be said that the activity of the petitioner is such which is injurious to public health or that he has violated any public order by committing offence under the Bombay Prohibition Act. To substantiate his say, the learned advocate for the petitioner has relied upon the decision of this Court in the case of Sandip Omprakash Gupta v. State of Gujarat reported in 2004(1) GLR 864 in which this Court has held that, on the basis of solitary incident, resort to preventive detention is uncalled for, as such solitary case can be dealt with under the ordinary criminal law.

14. Considering the aforesaid fact that, the authority, while exercising the powers under sec.9(2) of PASA, has not taken appropriate care even to find out the credentials, character and antecedents of the detenu, and as well as on the ground that the alleged activity of the petitioner may not amount to breach of public order, as, at the most, it may amount to breach of law and order, and since it cannot be said that there is violation of public order on the part of the detenu, the detention order is required to be quashed. Further, as held by a learned Single Judge of this Court in the case of Sandip Omprakash Gupta (supra), the detenu could have been dealt with under the ordinary criminal law as there is only a solitary incident. On the aforesaid grounds, the petition is required to be allowed.

15. For the foregoing reasons, this petition is allowed. The order of detention dated 24.1.2004 is quashed and set aside. The detenu, Pitambar Ramanbhai Birade is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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